No. 359

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SUPREME COURT, U. S.

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IN THE

Supreme Court of the United States

October Term, 1968

JOHN F. GRAHAM,

Petitioner,

v.

THE HONORABLE HAROLD H. GREENE,
THE HONORABLE CATHERINE B. KELLY,
THE HONORABLE TIMOTHY MURPHY,
DALE C. CAMERON, M.D.,
UNITED STATES OF AMERICA,

Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the District of Columbia Circuit

REPLY BRIEF OF PETITIONER

JOHN F. GRAHAM, pro se
1914 Connecticut Avenue, N.W.
Washington, D.C.

INDEX

Page

Cases Cited:

Bradley v. Fisher,
13 Wall. (80 U. S.) 335 4

Case de Tanistry,
Davis 28; 80 Eng. Rep. 516 5

Cooper v. O'Connor,
69 U. S. App. D.C.; 99 F.2d 135 4

Hudson v. Parker,
156 U. S. 277 3

Martin v. Hunter's Lessee,
1 Wheat. (14 U. S.) 304 . . . . . 4, 5

Stack v. Boyle,
342 U. S. 1 3

Treatises:

The 5th Amendment Today,
Griswold 7

The Second Part of the Institutes,
Coke 7

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In response to the petitioner's petition for a writ of certiorari the Solicitor General has filed a memorandum in behalf of respondents Murphy, Cameron and the United States, and the District of Columbia Corporation Counsel has filed a brief in behalf of respondents Greene and Kelly. Both the memorandum and the brief oppose granting of the petitioner's petition, which petition is predicated chiefly on four propositions, to wit:

1. A committing magistrate is not a court and therefore is prohibited by statute from doing more than discharging the prisoner or holding him for trial;
2. A state or municipal court does not have jurisdiction of an offense against the laws of the United States;
3. Where a court usurps judicial authority all proceedings are rendered *coram non judice;*
4. A judicial officer acting outside the scope of his authority is liable to the injured party.

In the brief for respondents Greene and Kelly the respondents suggest to the Court that the petitioner's case cannot be converted into a constitutional matter of a magnitude sufficient to warrant the exercise of this Court's jurisdiction. The petitioner submits that commitment to a mental institution for exercising *freedom of speech* is a denial of *freedom from cruel and unusual punishment;* that commitment to a mental institution for six months prior to arraignment is a denial of the right to a *speedy trial,* and that commitment to a mental institution by a court without jurisdiction of the offense is a violation of *due process* and *equal protection* and a denial of constitutionally guaranteed *privileges and immunities.* These constitutional rights are fundamental to a democratic government, and it is the petitioner's position that the courts do not have the authority to abrogate them; indeed it is the courts' duty to preserve them.

Following his arrest pursuant to 18 U.S.C. 876 (which provides that mailing threatening letters is punishable by five years' imprisonment) the petitioner, pursuant to Rule 5(a), Federal Rules of Criminal Procedure, was taken before a judge of the District of Columbia Court of General Sessions who was sitting as a committing magistrate. Although it is provided by 18 U.S.C. 3041 that the acts and orders of such a magistrate shall have no effect be-

yond determining to hold the prisoner for trial or to discharge him from arrest, the petitioner was ordered committed to D.C. General Hospital for a 30-day period of observation. At the end of the 30-day period the petitioner was, by a court having no jurisdiction of the offense, ordered committed to St. Elizabeths Hospital as incompetent to stand trial.[1]

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[1]The petitioner was arrested and imprisoned on November 30, 1965; indicted on February 24, 1966, and arraigned on May 23, 1966, when, following a not guilty plea, he was released on his own recognizance. On motion of the Government the indictment was dismissed on October 19, 1966. Because the petitioner was confined in St. Elizabeths he did not appear for a scheduled arraignment on March 11, 1966, and, because the District Court did not know the whereabouts of the petitioner, the District Court on that date issued a bench warrant for his apprehension. Cf. *Stack v. Boyle*, 342 U.S. 1, 4 (1951), where Mr. Chief Justice Vinson said:

> From the passage of the Judiciary Act of 1789, 1 Stat. 73, 91, to the present Federal Rules of Criminal Procedure, Rule 46(a)(1), federal law has unequivocally provided that a person arrested for a non-capital offense *shall* be admitted to bail. This traditional right to freedom before conviction permits the unhampered preparation of a defense, and serves to prevent the infliction of punishment prior to conviction. See *Hudson v. Parker*, 156 U.S. 277, 285 (1895). Unless this right to bail before trial is preserved, the presumption of innocence, secured only after centuries of struggle, would lose its meaning.

By an unhappy coincidence the petitioner was committed to St. Elizabeths Hospital while the quite substantial estate of petitioner's mother was in the process of being settled. Needless to say, relatives of the petitioner who were also legatees of the estate were not unduly grieved when the petitioner was declared incompetent by the Government's psychiatrists. The question raised thereby is deprivation of property without due process.

It is the petitioner's position that the act of ordering the commitment of the petitioner to D.C. General Hospital, instead of holding him for trial in the United States District Court or discharging him from arrest, rendered *coram non judice* all the proceedings in which the petitioner was involved.[2] The respondents make the claim that they are protected from tort liability by official immunity. The fact is, however, that neither judges nor ministerial officers are protected by official immunity when acting beyond the scope of their authority. As it was observed by the United States Court of Appeals for the District of Columbia Circuit in *Cooper v. O'Connor,* 69 U.S. App. D.C. 100, 102-103; 99 F.2d 135, 137-138 (1938):

> There is a general rule that a ministerial officer who acts wrongfully, although in good faith, is nevertheless liable in a civil action and cannot claim the immunity of the sovereign. There is also a general rule that if any officer – ministerial or otherwise – acts outside the scope of his jurisdiction and without authorization of law, he is liable in an action for damages for injuries suffered by a citizen, as a result thereof. See *Bradley v. Fisher,* 13 Wall. 335, 351-352, 20 L.Ed. 646.

From the respondents' statement that, between 1956 and 1962, 194 accused felons were committed to St. Elizabeths Hospital by the D.C. Court of General Sessions, the respondents appear to be arguing that prior usurpation of authority is a justification for their acts. It is a maxim

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[2] Cf. *Martin v. Hunter's Lessee,* 1 Wheat. (14 U.S.) 304, 364 (1816), where Mr. Justice Johnson said:

> It is an acknowledged principle of, I believe, every court in the world, that not only the decisions, but everything done under the judicial process of courts, not having jurisdiction are, *ipso facto,* void.

of law that what from the beginning is invalid, the passage of time cannot correct.[3] Inasmuch as three of the respondents are presently municipal court judges, their apparent unfamiliarity with the statutes establishing the D.C. Court of General Sessions as a misdemeanor court does not seem appropriate.

The petitioner, who was accused of a felonious offense against the laws of the United States, contends that he was properly taken before a committing magistrate, but that the committing magistrate improperly ordered him committed for 30 days to D.C. General Hospital in violation of 18 U.S.C. 3041 and Article IV, Sec. 2, of the Constitution (equal privileges and immunities), Fifth Amendment (due process), Sixth Amendment (speedy trial) and Fourteenth Amendment (equal protection). The respondents, however, argue that the petitioner was properly committed to D.C. General Hospital pursuant to 24 D.C. Code 301(a). From this argument it can be inferred that the commitment to D.C. General Hospital was ordered, not by a committing magistrate, but by a judge of the D.C. Court of General Sessions.[4]

The respondents, the petitioner submits, cannot have it both ways. Either the petitioner's commitment to D.C. General Hospital was ordered by a committing magistrate, in which case the committing magistrate was

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[3]Cf. *Le Case de Tanistry (Mac Brien v. O'Callaghan)*, Davis 28, 32; 80 Eng. Rep. 516, 520 (1608):

> [S]i fuit unreasonable en le originall, nul usage ou continuance poet faire ceo bon. Quod ab initio non valuit, tractu temporis non convalescet.

[4]Cf. *Martin v. Hunter's Lessee, supra,* at 336, where Mr. Justice Story said:

> No part of the *criminal jurisdiction* of the United States can, consistently with the constitution, be delegated to

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bound by 18 U.S.C. 3041, or, if 24 D.C. Code 301(a) was invoked to commit the petitioner to D.C. General Hospital, the committing magistrate was improperly exercising the authority of a judge of the D.C. Court of General Sessions. In other words, if the commitment was ordered pursuant to a District of Columbia statute, the act was that of a judge of the D.C. Court of General Sessions and, inasmuch as the petitioner was arrested for a Federal offense, such act was *ipso facto* void.[5]

The petitioner is contending that he was deprived of his civil rights and that an action lies against the respondents pursuant to 42 U.S.C. 1983. According to successive Acts of Congress (2 Stat. 107; 12 Stat. 580-581; 12 Stat. 764; 31 Stat. 1190; 35 Stat. 623; 56 Stat. 190; 76 Stat. 1171), it was never intended that the judges of the District of Columbia Court of General Sessions should have greater judicial authority in criminal matters than that of justices of the peace. It would appear, however,

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[4](Continued)

> State tribunals. The admiralty and maritime jurisdiction is of the same exclusive cognizance; and it can only be in those cases where, previous to the constitution, State tribunals possessed jurisdiction independent of national authority, that they can now constitutionally exercise a concurrent jurisdiction. Congress, throughout the Judiciary Act, and particularly in the 9th, 11th, and 13th sections, have legislated upon the supposition, that in all the cases to which the judicial powers of the United States extended, they might rightfully vest exclusive jurisdiction in their own courts.

[5]In respect to the respondent United States, the petitioner's tort claim is *not*, as alleged [illegible] the respondents, that he was wrongfully confined. The gist of the complaint is that the petitioner was subjected to treatment in violation of accepted medical practice; specifically, the administration of a relatively new and potent drug with

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that the respondents are asking the Court to permit inferior courts to take jurisdiction of felonies, including those committed against the laws of the United States.[6]

Due process is the essence of liberty, and if due process is the doctrine by which the individual is protected from the tyranny of government, it is the doctrine, too, by which the integrity of government is preserved. As Dean Griswold[7] said some fourteen years ago:

> [T]he essence of liberty * * * is the freedom of the individual from the arbitrary power of governmental authority. When we see more clearly that our present problem is simply one of due process of law in its pervasive sense * * * we will have no difficulty finding a satisfactory solution which will recognize and preserve the basic rights of individuals while providing ample protection for the state.

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[5](Continued)
26 possible side effects, all but two of which were apparently unknown to the respondent. The petitioner further claimed that confinement in a hospital for the insane when the respondent knew the petitioner not to be insane constitutes cruel and unusual punishment. It is doubtful that the United States District Court, as alleged by the respondent, dismissed the complaint because the petitioner's charges were unsubstantiated; it being beyond the purview of any court, on a motion to dismiss, to decide controverted issues of fact.

[6]Cf. Edward Coke, Milite, *The Second Part of the Institutes of the Lawes of England* (London, 1642), c. 29, p. 48:

> Every oppression against law by colour of any usurped authority is a kind of destruction, for *Quando aliquid prohibetur, prohibetur & omne, per quod devenitur ad illud:* And it is the worst oppression that is done by the colour of justice.

[7]Ervin N. Griswold, *The 5th Amendment Today* (Cambridge, 1955), p. 51.

It would appear that due process has four purposes: (1) to protect the individual from the tyranny of the Government; (2) to protect society by the assurance that criminals will not escape the consequences of their acts; (3) to uphold the dignity of the Government; (4) to protect the Government from those who would subvert it by the manipulation of its laws. Much has been said in recent months about law and order, but if the courts cannot be relied upon to conform to the law, the law itself must fall into disrepute, with ultimate detriment to our country. For this reason, above all, the petitioner prays the Court to reverse the judgment of the United States Court of Appeals.

Respectfully submitted,

JOHN F. GRAHAM, pro se
1914 Connecticut Ave., N.W.
Washington, D.C.